Filed 1/4/10 In re Martin CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re WILLIAM FRED MARTIN on Habeas Corpus.	D054926 (San Diego County Super. Ct. No. HC18782)

Petition for writ of habeas corpus, Polly H. Shamoon, Judge. Petition dismissed.

Petitioner William Martin seeks a writ of habeas corpus[1] requiring the Board of Parole Hearings (BPH) to find him suitable for parole. Although this court issued an order to show cause, subsequent developments have made the petition moot.

BACKGROUND

In 1978, Martin was convicted of first degree murder and sentenced to an indeterminate term of seven years to life. Martin, now 52 years old, has remained in

1 Martin characterized his petition as a petition for writ of mandate. However, we treat the petition as a petition for writ of habeas corpus.

prison for more than 30 years and appears to have been well behaved in prison for at least the last 13 years.

The BPH found Martin unsuitable for parole at numerous earlier hearings. In its July 2008 denial, the Board found that the commitment offense "was carried out in an especially heinous, cruel and callous manner," "dispassionate and calculated," and demonstrated "exceptionally callous disregard for human suffering"; it characterized the motive for the crime as "frankly inexplicable." Additionally, the BPH noted Martin had a history of violence toward the victim, and his performance in prison during the first half of his incarceration was unsatisfactory. Although the BPH also noted many positive factors militating in favor of finding suitability, it determined he was unsuitable for parole "based on the crime itself."

Martin petitioned the superior court for a writ of habeas corpus. The trial court's written decision questioned whether the BPH's decision finding Wright unsuitable for parole was supported by "some evidence." The trial court noted that the principal ground cited by the BPH consisted of the facts of the underlying offense, which, under *In re Lawrence* (2008) 44 Cal.4th 1181 and *In re Shaputis* (2008) 44 Cal.4th 1241, would not alone support the decision absent other evidence connecting the crime to current dangerousness. Although the trial court acknowledged the BPH alluded to other facts, the BPH failed to identify additional facts that may have influenced its decision, which necessarily required Martin to "guess" what those other facts were and whether those other facts were relied on by the BPH to support its decision concerning Martin's current dangerousness.

The trial court nevertheless denied the writ. It reasoned that any relief it would have granted would have been limited to ordering the BPH to conduct a new hearing that complied with the principles announced in *In re Lawrence, supra,* 44 Cal.4th 1181 and *In re Shaputis, supra*, 44 Cal.4th 1241. However, because the trial court recognized that a "due-course suitability hearing" before the BPH was already scheduled and would have already occurred at the time of any court-ordered "new hearing," it would be an idle act to require a new hearing.

Martin petitioned this court for a writ of habeas corpus. He argued that, although the trial court correctly determined the BPH's denial violated due process, it erred by denying him the remedy prescribed by *In re Rico* (2009) 171 Cal.App.4th 659, 688 and *In re Gaul* (2009) 170 Cal.App.4th 20, 40. Martin asserted we should issue a writ directing the trial court to order the BPH to conduct a new hearing at which it shall declare Martin suitable for parole unless new evidence, either previously undiscovered or discovered subsequent to the 2008 hearing, supported a determination that Martin posed an unreasonable risk of danger to society if released on parole.

However, the BPH *did* conduct a regularly scheduled parole hearing on July 6, 2009, and at that time found Martin suitable for parole. The People contend, and we agree, the July 6, 2009, action by the BPH renders moot the instant petition. We therefore dismiss the instant petition as moot.

DISCUSSION

Ordinarily, we do not review questions that have become moot. (*National Assn. of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 746.) As one court instructed:

> "It is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]' [Citations.]" (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.)

Numerous other decisions have likewise concluded mootness requires dismissal of an appellate challenge to an underlying ruling. (See *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 11 [dismissing as moot appeal from trial court's denial of injunction to stop election where election had subsequently taken place]; *Bell v. Board of Supervisors* (1976) 55 Cal.App.3d 629, 636 [dismissing as moot appeal where challenged legislation had been repealed and replaced with materially different law]; *National Assn. of Wine Bottlers v. Paul, supra,* 268 Cal.App.2d 741, 746 [dismissing as moot appeal where challenged order of Director of Agriculture had been terminated].)

However, courts will not deem a criminal case moot where it is shown there is a possibility any collateral legal consequences will be imposed on the basis of the challenged decision.[2] (*Sibron v. New York* (1968) 392 U.S. 40, 57; *People v. Lindsey*

---

[2] Martin originally suggested, notwithstanding the mootness of his petition as to his personal challenge, we should reach the issues raised by his petition. Martin argued we should address and resolve an issue that "arises with regularity . . . yet has not been directly addressed or decided in any decision of precedential authority--namely, what is the appropriate remedy and remand order for a life inmate who was wrongfully denied parole base[d] solely on the immutable circumstances of the commitment offense?"

(1971) 20 Cal.App.3d 742, 744.) For example, if pursuing a successful appeal will allow the defendant to clear his or her name notwithstanding that the defendant has served his or her term of imprisonment, the appeal will not be dismissed as moot. (*Lindsey,* at p. 744.)

Here, however, there are no collateral legal consequences that could be abated were Martin's petition allowed to proceed. Whether we affirmed or reversed the trial court's order, subsequent events--namely the 2009 BPH hearing that has become final without a Governor's veto--would render our effort and resulting decision an idle act. The trial court here questioned whether the BPH's decision was supported by " 'some evidence' " within the meaning of *Lawrence* and *Shaputis*, but the only error raised by Martin was that the trial court failed to order a new hearing at which the BPH would be required to find Martin suitable for parole unless new evidence, either previously undiscovered or discovered subsequent to the 2008 hearing, supported a determination that Martin posed an unreasonable risk of danger if released on parole. The new hearing has already occurred, without the directions from the trial court that Martin criticized in this petition, and the BPH (1) found Martin suitable for parole and (2) apparently

---

However, that issue has repeatedly been addressed and resolved in published cases. (See, e.g., *In re Rico, supra,* 171 Cal.App.4th at p. 688; *In re Gaul, supra,* 170 Cal.App.4th at p. 40.) Additionally, we note the Supreme Court has recently granted review in two cases (see *In re Prather,* review granted Jul. 29, 2009, S172903; *In re Molina,* review granted Jul. 29, 2009, S173260) to address the issue of the proper remedy when an appellate court finds the BPH decision to deny parole cannot be upheld. (See Supreme Court Summary of Cases Accepted During the Week of July 27, 2009, http://www.courtinfo.ca.gov/courts/supreme/summaries/WS072709.PDF.) Accordingly, any opinion by this court would be advisory, and " '[t]he rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.' " (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 860.)

concluded there was no new evidence (either previously undiscovered or discovered subsequent to the 2008 hearing) supporting a determination that Martin posed an unreasonable risk of danger if released on parole. Whether or not the BPH correctly denied parole in 2008 does not pose any collateral consequence to Martin because in 2009 it *did* grant parole, which grant has become final. Even were we to rule that Martin's petition was correctly denied by the trial court, that ruling would have no impact on the 2009 hearing and determination that did occur.

Whatever we might conclude, the subsequent Board decision granting parole would supersede our decision. On December 3, 2009, the Governor declined to review the BPH's 2009 decision. Martin suffers no prejudice by aborting the present proceedings, and neither do the People. We agree that the proper disposition is to dismiss the petition, a disposition Martin does not now contest.

DISPOSITION

The petition is dismissed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.